IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8934 OF 2003

The Principal,

K.I.T's College of Engineering & Anr. : Petitioners

V/s.

Shri Shivaji Shamrao Chougule & Ors. : Respondents

...

Mr.S.S. Pakale for the petitioners.

Mr.M.S.Topkar for respondent no.1.

...

CORAM : S.A. BOBDE, J.

April 4, 2005.

P.C.:

1. The petitioners are a prosperous Engineering College situate at Kolhapur. Respondent no.1 is a Driver employed with the petitioners. The petitioners had two vehicles, one a Maruti van and the other a jeep. They sold the jeep on 2.7.1999. Thereafter, they purchased four buses.

2. Even though respondent no.1 has a licence to drive buses i.e. heavy vehicles, the petitioners have effected termination of his services by way of retrenchment.

3. The respondent no.1 approached the College Tribunal, Pune, which has considered it appropriate in the interests of justice to set aside the retrenchment order dated 11.12.2001 and directed reinstatement with back wages. The College Tribunal has observed that there has been no misconduct on the part of respondent no.1. This order is impugned in this petition.

4. Mr.Pakale, learned counsel for the petitioners, strenuously urged that it is the right of the petitioners to effect retrenchment of respondent no.1's service. There is, however, no doubt that this right is circumscribed by justness and fairness while effecting retrenchment. Moreover, in this case, I am not inclined to accept this submission, in view of the staffing pattern accepted by the petitioners before the Joint Director of Technical Education, Pune, which is at exh.'A' to the affidavit-in-reply. The petitioners have accepted that there shall be two Drivers. There is a note 3 appended to the staffing pattern which reads as follows:-

> "Surplus staff, if any, will be retained in the existing post in the scale and these will be absorbed later at the time the expansion in the existing pattern takes

place."

This certainly makes the retrenchment unjust. Peculiarly, in spite of acquisition of more vehicles generating employment for more Drivers, it has resulted in retrenchment of an existing Driver contrary to the agreed staffing pattern. In these circumstances, I am not inclined to exercise the extraordinary jurisdiction of this Court.

5. Accordingly, this petition is dismissed.

Sd/-

S.A. BOBDE, J.